

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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ELVIN MERCADO,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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) Civil No. 04-11653-PBS  
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**ASSENTED-TO MOTION OF PETITIONER FOR AN  
EXTENSION OF TIME TO FILE REPLY OR TO AMEND PETITION**

Pursuant to Rule 5 of the Rules Governing Section 2255 Proceedings<sup>1</sup> and Federal Rule of Civil Procedure 15,<sup>2</sup> Petitioner Elvin Mercado hereby respectfully requests that the Court extend the time by which he may file a reply brief or amend his petition to December 7, 2005. In support of this motion, the undersigned states the following:

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<sup>1</sup> Rule 5(d) of the Rules Governing Section 2255 Proceedings provides, in pertinent part, that the “moving party may submit a reply to the respondent’s answer or other pleading within a time fixed by the judge.” Rules Governing Section 2255 Proceedings for the United States District Courts, Rule 5(d).

<sup>2</sup> Under Federal Rule of Civil Procedure 15(a) — made applicable to habeas proceedings by 28 U.S.C. § 2242, Federal Rule of Civil Procedure 81(a)(2), and Rule 12 of the Rules Governing Section 2255 Proceedings — a party may amend its pleadings by “leave of court” at any time during a proceeding. *See U.S. v. Hicks*, 283 F.3d 380, 386-387 (D.C. Cir. 2002).

1. The Court appointed the undersigned to represent Petitioner on August 30, 2005. While counsel have spoken with Mr. Mercado by telephone, the undersigned has not yet had the opportunity to meet personally and confer with Mr. Mercado.

2. On March 21, 2005, Petitioner filed a motion requesting that the Court order the government to produce recordings or transcripts of the telephone conversations that took place between Petitioner and his former counsel, Stephen J. Rappaport, while Petitioner was incarcerated at F.M.C. Devens. Such recordings or transcripts may provide evidentiary support for Petitioner's ineffective assistance claim. On March 25, 2005, the Court granted Petitioner's motion and ordered the government to "ask the prison to provide a copy of any tapes of these communications." Petitioner and the undersigned have not yet received the tapes from F.M.C. Devens.

3. Petitioner's reply brief is currently due October 7, 2005. An extension of two months is necessary so that counsel can confer with Mr. Mercado and develop appropriate arguments supporting Mr. Mercado's § 2255 petition for relief.

4. Counsel have conferred with counsel for the government, Assistant U.S. Attorney Peter K. Levitt, and the government assents to this motion.

For the foregoing reasons, Petitioner respectfully requests that the Court extend the time by which he may file a reply brief or amend his petition to December 7, 2005.

**LOCAL RULE 7.1(A)(2) CERTIFICATION**

The undersigned certifies that, pursuant to Local Rule 7.1(A)(2), the moving party has conferred with counsel for the government, Assistant U.S. Attorney Peter K. Levitt, on the

matters set forth in the foregoing motion and therefore reports that the government will not file an opposition to this motion.

Respectfully submitted,

/s/ Roberto M. Braceras

Roberto M. Braceras (BBO# 566816)

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